

UNITED STATES DISTRICT COURT  
for the  
Southern District of Indiana

FILED  
U.S. DISTRICT COURT  
INDIANAPOLIS, INDIANA  
2015 NOV 17 PM 2:53

MICHAEL HOWARD REED

Plaintiff(s),

vs.

LEANN LARIVA

Defendant(s).

)  
)  
) 2:15-cv-00212-JMS-MJD  
)  
)  
)

NOTICE OF APPEAL and  
NOTICE OF PROCEEDING IN FORMA PAUPERIS (a)(3)  
AS AFFIDAVIT

county of Reed. Vigo )  
state of Reed. Indiana ) ss. True Affidavit

NOTICE OF APPEAL

COMES NOW, Michael-Howard-Reed. and files this NOTICE of APPEAL by and through Rule 4(a)(1)(A) timely Notice of Appeal from Hon Jane Magnus-Stinson, judicial employee of the Court and of We-the-People, Entry Dismissing Action and Directing Entry of Final Judgment, and Final Judgment pursuant to Fed. R. Civ. P., Rule 58 on October 26, 2015, see attached order and evidence and states as follows;

GROUND FOR APPEAL

Jane Magnus-Stinson did not permit the real party of interest answer the petition for writ 28 §2241 whereinfor violated the due process of the original claim. See attachment of evidence herein duly constituted and fact of the case record in violation of Title 28 USC, and the Acts of Congress, and oath of office; and

On or about July 16, 2015, document 3 Entry Directing Further Proceedings, whereas the judicial officer of the Court was acting as the respondent LEANN LARIVA, warden, in answering the Petition for Habeas Corpus, whereinfor is in violation of Title 28 USC § 454 practice of law by justices and judges; and

On or about August 5, 2015, Entry Directing Further Proceedings, whereas once more the judicial officer of the Court was acting in violation of Title 28 USC § 454 practice of law by justices and judges; and

On or about October 26, 2015, Entry Dismissing Action and Directing of Final Judgment, is further evidence of violation, Title 28 USC §454 and the removal of appearance of justice from once Hon Jane Magnus-Stinson, judge, of the Southern District of Indiana, United States District Court of Indiana, Terre-Haute Division; and

Once Honorable, Jane Magnus-Stinson has violated the Constitution, Article III, Title 28 USC whereinfor creates a constitutional crisis on record of the inferior court, by and through the Acts of Congress, and has legislated from the desk of a judicial officer, for the Court and brought forth new law into existence, and created a "STAR CHAMBER COURT" as acting "court" ; "judge" ; "jury" and "attorney for respondent" and "respondent" and "the United States of America", see duly constituted evidence attached a part herein complete by this reference; and

Once Honorable, Jane Magnus-Stinson has violated the Supreme Court decisions wherein, became law for the appellate courts, and district courts and all justices and judges under the Constitution for the United States of America;

And Jane Magnus-Stinson has come into a contract as a third party intervenor and has become liable, for all actions and damages, from case number 4:09-cr-00076-DLH-1-2-3 and becomes a co-conspirator for over throwing, and throwing off our republican form of government; signed acts of treason; and

Whereinfor the Appellant Executor-Michael-Howard-Reed files this appeal in the district court for the Southern District of Indiana, under penalties of perjury Title 28 USC §1746, and asks for a briefing schedule for proceeding on appeal.

NOTICE OF PROCEEDING IN FORMA PAUPERIS  
AS AFFIDAVIT

county of Reed. Vigo     )  
                                  ) ss. Affidavit, Title 28|1746  
state of Reed. Indiana    )

COMES NOW, Michael-Howard-Reed. in honor, super protest for dishonor, and is certifying that Hon Jane Magnus-Stinson Ruling -Entry-Order-has been in bad faith and the filing of this appeal is in good faith, and by and through Rule 24(a)(3) the appellant was permitted to proceed in forma pauperis in the district -court-action-in case number 4:09-cr-00076-DLH-1 for which this 28 USC § 2241 was filed on, and by and through this Rule 24 (a) (3) may proceed on appeal in forma pauperis in good faith, and

in honor super protest for dishonor; and

Dated this 8th day of November 2015.

Respectfully,

*Michael Howard Reed*  
Executor-Michael-Howard-Reed

*Without Prejudice*

UNITED STATES DISTRICT COURT  
for the  
Southern District of Indiana

MICHAEL HOWARD REED

Plaintiff(s),

vs.

LEANN LARIVA

Defendant(s).

)  
)  
) 2:15-cv-00212-JMS-MJD  
)  
)  
)

CERTIFICAT OF SERVICE AS AFFADAVIT

County of Reed. Vigo )

) ss. Affidavit

State of Reed. Indiana.)

Comes now Michael-Howard-Reed. Petitioner States under the pains of perjury 28§ 1746. That Executor-Michael-Howard-Reed. Caused to be mailed first class postage pre-paid notice of Appeal and Notice of Proceeding In Forma Pauperis (a)(3) as Affidavit

On 11/08/2015 In the institution mail Box. USPS tracking Number # To the court clerk at 921 ohio St. terre-Haute. IN. 47807; and to respondent, LEANN LARIVA. ACTING COMPLEX-WARDEN, 4200 Bureau Road North, Terre Haute, IN. 47807. USPS Tracking Number# and US Court of Appeals, 219 S Dearborn St. , Court Clerk Room 2722, Chicago, IL 60604 -

Respectfully

Michael-Howard-Reed.

Michael-Howard-Reed.

Without Prejudice

Cc.

Bcc.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION

MICHAEL HOWARD REED,

Petitioner,

vs.

LEANN LARIVA, Warden,

Respondent.

Case No. 2:15-cv-00212-JMS-MJD

**Entry Directing Further Proceedings**

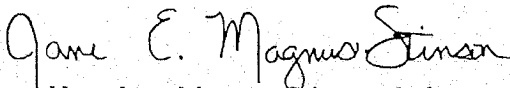
Michael Howard Reed is confined in this District and brings this action pursuant to 28 U.S.C. § 2241 challenging his conviction for possessing a firearm and ammunition while he was a fugitive from justice. That conviction was entered in the United States District Court for the District of North Dakota in No. 4:09-cr-0076-DLH-1. The conviction was affirmed on appeal by the Eighth Circuit Court of Appeals in No. 10-2010 on March 23, 2011.

Reed may seek a remedy under § 2241 only if a motion under § 28 U.S.C. § 2255 was or would be inadequate or ineffective to bring his habeas claim. 28 U.S.C. § 2255(e). His habeas claim appears to be that he is actually innocent of the offense of which he was convicted because there was insufficient evidence to support the jury's verdict. To satisfy § 2255(e), Reed's claim for relief must (1) rely on a new, retroactive case not available when he moved under 28 U.S.C. § 2255 that (2) interprets a statute in a way that (3) decriminalizes the crime of conviction. *See Brown v. Rios*, 696 F.3d 638, 640 (7<sup>th</sup> Cir. 2012); *In re Davenport*, 147 F.3d 605, 610-12 (7<sup>th</sup> Cir. 1998).

Reed shall have **through August 10, 2015** in which to show how he can satisfy the foregoing standard to proceed with his challenge pursuant to 28 U.S.C. § 2241.

**IT IS SO ORDERED.**

Date: 07/16/2015

  
Hon. Jane Magnus-Stinson, Judge  
United States District Court  
Southern District of Indiana

Distribution:

MICHAEL HOWARD REED  
04414-048  
TERRE HAUTE U.S. PENITENTIARY  
Inmate Mail/Parcels  
P.O. BOX 33  
TERRE HAUTE, IN 47808

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION

MICHAEL HOWARD REED,

Petitioner,

v.

LEANN LARIVA, Warden,

Respondent.

Case No. 2:15-cv-0212-JMS-MJD

**Entry Directing Further Proceedings**

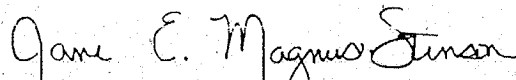
Michael Howard Reed challenges his convictions for possessing a firearm and ammunition while he was a fugitive from justice entered in the United States District Court for the District of North Dakota in No. 4:09-cr-0076-DLH-1.

Reed seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241. He may do so only if he can satisfy the requirements of 28 U.S.C. § 2255(e), meaning that he must (1) rely on a new, retroactive case not available when he moved under 28 U.S.C. § 2255 that (2) interprets a statute in a way that (3) decriminalizes the crime of conviction. *See Brown v. Rios*, 696 F.3d 638, 640 (7<sup>th</sup> Cir. 2012); *In re Davenport*, 147 F.3d 605, 610–12 (7<sup>th</sup> Cir. 1998).

Reed was given a period of time in which to supplement his petition for writ of habeas corpus by showing that the foregoing requirements can be met. He has filed a response, but his response does not establish that these requirements can be met. He shall have a further period of time, through August 24, 2015, in which to do so.

IT IS SO ORDERED.

Date: 08/05/2015

  
Hon. Jane Magnus-Stinson, Judge  
United States District Court  
Southern District of Indiana

Distribution:

MICHAEL HOWARD REED  
04414-048  
TERRE HAUTE U.S. PENITENTIARY  
Inmate Mail/Parcels  
P.O. BOX 33  
TERRE HAUTE, IN 47808



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION**

MICHAEL HOWARD REED,	)	
	)	
Petitioner,	)	
v.	)	Case No. 2:15-cv-00212-JMS-MJD
	)	
LEANN LARIVA, Warden,	)	
	)	
Respondent.	)	

**Entry Again Directing Further Proceedings**

A copy of the petitioner's filing of August 21, 2015 shall be included with the petitioner's copy of this Entry.

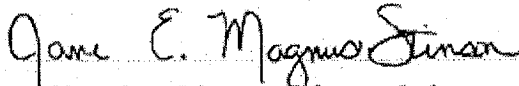
Michael Howard Reed challenges his convictions for possessing a firearm and ammunition while he was a fugitive from justice entered in the United States District Court for the District of North Dakota in No. 4:09-cr-00076-DLH-1.

Reed seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241. He was informed of the three requirements for invoking the savings clause of 28 U.S.C. § 2255(e) and given a period of time in which to supplement his petition by showing that these requirements can be met. He has filed a response, asserting that his claim of actual innocence supersedes the need to establish the requirements for invoking § 2255(e). His claim of actual innocence is a simple variation of his challenge to the sufficiency of the evidence which was presented and rejected in his direct appeal. His assertion regarding the savings clause, however, is incorrect. "A petitioner may not argue the merits of his claim until he has opened the portal to a § 2241 proceeding by demonstrating that the savings clause of § 2255(e) applies to his claim." *Smith v. Warden, FCC Coleman-Low*, 503 F. App'x 763, 765 (11th Cir. 2013) (citation omitted).

Reed has thus put the cart before the horse, arguing that this is acceptable. He is mistaken in doing so. He shall have a further period of time, **through September 22, 2015**, in which to demonstrate that he may appropriately invoke the savings clause of 28 U.S.C. § 2255(e) in this case. He shall also have **through September 22, 2015** in which to explain how his claim of actual innocence differs from his challenge to the sufficiency of the evidence in his direct appeal, and if it does not differ from his challenge to the sufficiency of the evidence it can be relitigated here.

IT IS SO ORDERED.

Date: 09/02/2015

  
Hon. Jane Magnus-Stinson, Judge  
United States District Court  
Southern District of Indiana

Distribution:

MICHAEL HOWARD REED  
04414-048  
TERRE HAUTE U.S. PENITENTIARY  
Inmate Mail/Parcels  
P.O. BOX 33  
TERRE HAUTE, IN 47808

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION

MICHAEL HOWARD REED,

Petitioner,

v.

LEANN LARIVA,

Respondent.

Case No. 2:15-cv-00212-JMS-MJD

**Entry Dismissing Action and Directing Entry of Final Judgment**

**I.**

“Federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face.” *McFarland v. Scott*, 512 U.S. 849, 856 (1994). This is an appropriate case for such a disposition. This conclusion rests on the following facts and circumstances:

1. Michael Howard Reed is confined in this District and challenges his convictions in the United States District Court for the District of North Dakota for possessing a firearm and ammunition while he was a fugitive from justice entered in No. 4:09-cr-00076-DLH-1. *See United States v. Reed*, 636 F.3d 966 (8th Cir. 2011); *United States v. Reed*, 2010 WL 99128 (D.N.D. January 5, 2010).

2. Reed seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, invoking the savings clause of 28 U.S.C. § 2255(e). “A federal prisoner may use a § 2241 petition for a writ of habeas corpus to attack his conviction or sentence only if § 2255 is ‘inadequate or ineffective.’” *Hill v. Werlinger*, 695 F.3d 644, 645 (7th Cir. 2012) (quoting 28 U.S.C. § 2255(e)).

3. The Court of Appeals for the Seventh Circuit has held that Section 2255 is only inadequate or ineffective when three requirements are satisfied: (1) the petitioner relies on a new case of statutory interpretation rather than a constitutional decision; (2) the case was decided after his first Section 2255 motion but is retroactive; and (3) the alleged error results in a miscarriage of justice. *See Brown v. Caraway*, 719 F.3d 583, 586 (7th Cir. 2013). "The petitioner bears the burden of coming forward with evidence affirmatively showing the inadequacy or ineffectiveness of the § 2255 remedy." *Smith v. Warden, FCC Coleman-Low*, 503 F. App'x 763, 765 (11th Cir. 2013) (citation omitted).

4. Reed was notified of these requirements and given a period of time in which to supplement his petition for writ of habeas corpus by showing that the foregoing requirements can be met. He has filed two responses, most recently the response filed on September 23, 2015, each of which has been considered along with the original petition for writ of habeas corpus.

5. Reed has not addressed the requirements highlighted in paragraph 3 of this Entry, but argues instead that there is a jurisdictional defect in the proceedings which resulted in his conviction. However, his claims that he was not charged and that the trial court lost jurisdiction are frivolous. PACER records show that an Indictment was returned on September 24, 2009 in No. 4:09-cr-0076-DLH-1. Omitting formal portions and the allegations regarding forfeiture, the Indictment charges that:

From in or about March 2009 through June 2009, in the District of North Dakota, MICHAEL HOWARD REED, then being a fugitive from justice from the State of Nevada, an arrest warrant having been issued on March 11, 2009, for failing to appear for a preliminary hearing as a result of pending charges of Possession of Controlled Substance with Intent to Sell and Transport of a Controlled Substance, felonies, in violation of Nevada state law, in Justice Court, Las Vegas Township, State of Nevada, Case No. 08F23387X, did knowingly possess in and affecting commerce a firearm and ammunition, that is, one Desert Eagle, Model Baby Eagle, 9mm caliber pistol, serial No. 134524; 15 rounds of Remington brand 9mm caliber ammunition and 10 rounds of E.L.D. brand 9mm caliber ammunition; In violation of Title 18, United States Code, Sections 922(g)(2) and 924(a)(2).

6. Reed's contention that an evidentiary insufficiency deprived the trial court of jurisdiction over the charges and yielded a conviction which is "void" is frivolous. *See Hugli v. United States*, 164 F.3d 378, 380 (7th Cir. 1999) ("Subject matter jurisdiction in every federal criminal prosecution comes from 18 U.S.C. § 3231, and there can be no doubt that Article III [of the United States Constitution] permits Congress to assign federal criminal prosecutions to federal courts. That's the beginning and the end of the 'jurisdictional' inquiry."). As suggested in the Entry of September 2, 2015, Reed's complaint is a re-packaged challenge to the sufficiency of the evidence, and the principles he cites seeking habeas corpus relief do not post-date even his direct appeal. A jurisdictional challenge was denied prior to trial and the evidence was found sufficient in his direct appeal. Reed also claims that the trial court's loss (or lack) of jurisdiction renders a 28 U.S.C. § 2255 motion unavailable, but he cites no authority for this proposition and the proposition is contrary to established law. *See Blake v. United States*, 723 F.3d 870, 878–79 (7th Cir. 2013)(explaining that relief under § 2255 is available "only in extraordinary situations, such as an error of constitutional or jurisdictional magnitude or where a fundamental defect has occurred which results in a complete miscarriage of justice").

7. Section 2241 consideration is only available when the prisoner has been denied "even one round of effective collateral review." *Taylor v. Gilkey*, 314 F.3d 832, 835 (7th Cir. 2002). That is not the case here. "The essential point is that a prisoner is entitled to one unencumbered opportunity to receive a decision on the merits." *Potts v. United States*, 210 F.3d 770 (7th Cir. 2000); *see also Swanson v. Lariva*, 2014 WL 4705396 (S.D.Ind. Sept. 22, 2014). The petitioner had that opportunity. He is not entitled to more, and this is evident from the face of his habeas petition and the public record of the convictions he challenges.

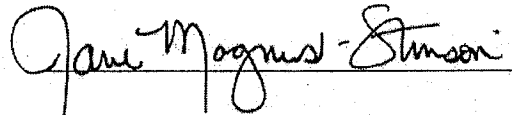
8. Based on the foregoing, Reed has sought relief pursuant to 28 U.S.C. § 2241 in circumstances which do not permit the use of that remedy. His petition for a writ of habeas corpus is therefore **denied**.

**II.**

Judgment consistent with this Entry shall now issue.

IT IS SO ORDERED.

Date: October 26, 2015

A handwritten signature in black ink, reading "Jane Magnus-Stinson". The signature is written in a cursive, flowing style. The first name "Jane" is written with a large, looped capital "J". The last name "Stinson" is written with a capital "S" and a trailing flourish.

Hon. Jane Magnus-Stinson, Judge  
United States District Court  
Southern District of Indiana

Distribution:

MICHAEL HOWARD REED  
04414-048  
TERRE HAUTE U.S. PENITENTIARY  
Inmate Mail/Parcels  
P.O. BOX 33  
TERRE HAUTE, IN 47808

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION

MICHAEL HOWARD REED,

Petitioner,

v.

LEANN LARIVA,

Respondent.

Case No. 2:15-cv-00212-JMS-MJD

**FINAL JUDGMENT PURSUANT TO FED. R. CIV. PRO. 58**

The Court, having this day directed the entry of final judgment, now enters FINAL JUDGMENT in favor of the respondent and against the petitioner, Michael Howard Reed.

Reed's petition for writ of habeas corpus is denied and the action is dismissed with prejudice.

Date: October 26, 2015

Laura Briggs, Clerk of Court

By: Michelle [Signature]  
Deputy Clerk

Jane Magnus-Stinson

Hon. Jane Magnus-Stinson, Judge  
United States District Court  
Southern District of Indiana

Distribution:

MICHAEL HOWARD REED  
04414-048  
TERRE HAUTE U.S. PENITENTIARY  
Inmate Mail/Parcels  
P.O. BOX 33  
TERRE HAUTE, IN 47808



Michael-Howard-Reed  
[04414-048]  
Federal Corr Institution  
POB 33  
Terre Haute, Indiana [47808]

"SPECIAL LEGAL MAIL"

RECEIVED  
NOV 16 2015  
U.S. CLERK'S OFFICE  
TERRE HAUTE, INDIANA

"SPECIAL LEGAL MAIL"

⇌04414-048⇌  
Laura A Briggs  
Clerk, US, Dist, Court.  
921 OHIO ST  
Room 104  
Terre Haute, IN 47807  
United States

UNITED STATES MARSHAL  
PACKAGE SCREENED BY  
X-RAY/MACHETOMETER

1100002

302

